41B of the Dangerous Drugs Act and it appears to me that the section contains not only express provisions which make the offence absolutely unbailable but also expresses in unequivocal language the intention of the legislature to restrict the judicial discretion as contained in the Criminal Procedure Code and other judge made laws. The expression 'notwithstanding any written law or any rule of law', to my mind, would include the provisions of the Criminal Procedure Code and also judge made laws or judicial precedents on bail. Section 41B of the Dangerous Drugs Act, being a particular subsequent legislation, must be construed as having curtailed the discretion to grant bail in drug offences punishable with death or life imprisonment previously vested in the courts by an earlier general legislation, i.e., the Criminal Procedure Code. When an Act enacts something in general terms and afterwards another Act on a particular subject introduces in express terms special restrictions on that subject, then the rule of construction demands that the provisions in the subsequent particular legislation should prevail and the provisions of the earlier legislation deemed curtailed or restricted to the extent of its inconsistency with the later legislation but not necessarily repealed.

The discretion as generally given by sections 388, 389 & 394 of the Criminal Procedure Code has been effectively taken away from the courts, both the Subordinate and High Courts, by section 41B of the Dangerous Drugs Act. Disconcerting as it may be for us to witness the power of the courts, especially those relating to the liberty of the subject who is accused but yet to be proven guilty, being gradually whittled away by statute, yet when Parliament has expressed in unequivocal language its intention to curtail this discretionary power, the courts are not free to question its wisdom in providing for a deterrent procedure for an obviously baneful mischief to society, but must interpret and give effect to the law as it stands.

The restriction on bail under section 41B of the Dangerous Drugs Act is absolute. Neither the courts below, nor this court, now possess the power to admit to bail any person charged thereunder with any offence punishable with death or more than five years' imprisonment, or even for lesser terms when the Public Prosecutor certifies that it is against public interest to allow bail.

The application for bail is therefore refused.

Application refused.

Solicitors: *Vohrah & Tan Chee Lan.*

TAI TEIK ONN & ANOR. v. ONG EWE TE

[O.C.J. (B.T.H. Lee J.) September 7, 1981]
[Ipoh — Originating Motion No. 48 of 1979]

Administrative Law — Certiorari — Order of Rent Appeal Board — Appeal Board hearing appeal more than six weeks from receipt of memorandum of appeal — Question of fact — No lack of jurisdiction — No breach of natural justice — Control of Rent (Perak) (Rent Tribunal) Rules, 1967, r. 10(3).

Practice and Procedure — Application for certiorari — New ground relied on at hearing — No application made to amend statement — R.S.C., 1957, O. 53 r. 3.

In this case the applicants applied for an order of *certiorari* to quash an order by a Rent Appeal Board which had dismissed a claim by the applicants heard before the Rent Tribunal. The grounds relied for the relief sought were —

(i) The Rent Appeal Board lacked jurisdiction when it dismissed the appeal by the applicants against the order that the applicants vacate and give up occupation of the premises — as there was no evidence that funds were available at the filing of the application for the purpose of putting into effect the development;

(ii) The Rent Appeal Board was wrong in law in that it failed to consider that the Rent Tribunal closed the hearing without hearing the respondents in the Rent Tribunal Application (the applicants before the High Court) as to their defences.

At the hearing counsel for the applicants added a third ground relying on rule 10(3) of the Control of Rent (Perak) (Rent Tribunal) Rules, 1967, which reads —

> "The Appeal Board shall within six weeks from the receipt of the memorandum of appeal, hear and determine the appeal."

Counsel for the respondent objected to the third ground, being argued.

Held: (1) non-compliance by the Rent Appeal Board with the rules could not be said to go to the foundation of the jurisdiction of the Board. Remedy could have been obtained by way of mandamus;

(2) in this case what was suggested was that there was an error of fact which did not affect jurisdiction. Where the proceedings are regular upon their face and the inferior tribunal has jurisdiction, the superior court will not grant *certiorari* on the ground that the court below has jurisdiction to decide the matter. It cannot be deemed to exceed or abuse its jurisdiction merely because it incidentally misconstrues a statute nor will *certiorari* be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision was wrong in matters of facts;

(3) in this case the applicants had a reasonable opportunity of presenting their case and in any event there was no breach of natural justice.

Cases referred to:-

(1) *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store & Anor.* [1978] 1 M.L.J. 144.

(2) *Seereelall Jhuggroo* v. *Central Arbitration and Control Board* [1953] A.C. 151.

(3) *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165; [1980] 2 All E.R. 689.

(4) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

(5) *Pearlman* v. *Harrow School* [1979] 1 Q.B. 56, 70.

(6) *Lee Kwee Foh Ltd.* v. *Yeong Choon Foong* [1969] 1 M.L.J. xxv.

(7) *Colonial Bank of Australasia* v. *Willan* (1874) L.R. 5 P.C. 417.

(8) *R.* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128.

(9) *Mak Sik Kwong* v. *Minister of Home Affairs (No. 2)* [1975] 2 M.L.J. 175.

(10) *Pahang South Union Omnibus Co. Bhd.* v. *Minister of Labour & Manpower & Anor.* [1981] 2 M.L.J. 199.

ORIGINATING MOTION.

Lim Boon Seng for the applicants.

V.W. Balasingam for the respondent.

Cur. Adv. Vult.

B.T.H. Lee J.: This is an application by the applicants for an order of *certiorari* to quash an order made by the Rent Appeal Board for the District of

Larut and Matang, Perak (hereinafter referred to as "the Appeal Board") dated August 1, 1979, dismissing a claim by the applicants heard before the Rent Tribunal for the District of Larut and Matang (hereinafter referred to as "the Rent Tribunal") given on February 8, 1977.

For an understanding of the issues raised in this case, reference may be made to the statement filed pursuant to Order 53, rule 1(2) of the English Rules of the Supreme Court, 1965 and the Rules of the Supreme Court, 1957, which is as follows: —

"1. The name and description of the applicants are Tai Teik Onn and Koh Keng Thong both of No. 18, Theatre Street, Taiping in the State of Perak. The applicants are the tenant and sub-tenant of the premises No. 18, Theatre Street, Taiping, erected upon Lot 1209 in the Township of Taiping. The registered owner of said premises is Ong Ewe Te (f) who at all material times is the landlord (hereinafter referred to as 'the said landlord').

2. On the 8th day of February, 1977 the Rent Tribunal for the District of Larut and Matang (hereinafter referred to as 'the Rent Tribunal') made an Order upon the hearing of an application pursuant to section 18 of the Control of Rent Act 1966 which said application was made by the Landlord.

3. The applicants herein appealed to the Rent Appeal Board for the District of Larut and Matang (hereinafter referred to as 'the Rent Appeal Board') against the said Order of the Rent Tribunal made on the 8th day of February, 1977. The Rent Appeal Board by an Order dated 1st day of August, 1979 ordered that:—

(a) the appeal by the applicants herein be dismissed,

(b) the 2nd applicant Koh Keng Thong vacate and give up occupation of premises No. 18, Theatre Street, Taiping forthwith,

(c) the landlord pay to the 2nd applicant a sum of $5,280 as compensation being four years rent at $110 per month,

(d) the landlord do deposit the said sum of $5,280 in court.

4. The relief sought is an Order of Certiorari to remove into this Honourable Court for the purposes of its being quashed the Order of the Rent Appeal Board dated 1st day of August, 1979 and that all necessary and consequential directions be given.

5. The grounds upon which the said relief is sought are:—

(1) The Rent Appeal Board lacked jurisdiction when it dismissed the appeal by the applicants against the Order that the applicants herein vacate and give up occupation of the premises No. 18, Theatre Street, Taiping as there was no evidence that funds were available at the filing of the application for the purpose of putting into effect the development.

(2) The Rent Appeal Board was wrong in law in that it failed to consider that the Rent Tribunal closed the hearing without hearing the respondents in the Rent Tribunal application as to their defences."

When the case came up for hearing before this court, counsel for the applicants added a third ground relying on rule 10(3) of the State Subsidiary Legislation, 1967 — Perak P.U. 6, which reads:

"10. (3) The Appeal Board shall, within six weeks from the receipt of the memorandum of appeal, hear and determine the appeal."

It will be convenient and perhaps logical to deal first with the third and last ground mentioned by counsel on behalf of the applicants.

It falls for observation that the Notice of Appeal was filed on February 25, 1977 (Exhibit "RAB 1") and the Memorandum of Appeal was filed on March 16, 1977 (Exhibit "RAB 2") and the hearing of the Rent Appeal Board from the decision of the Rent Tribunal was on March 16, 1979, after a period of more than two years from the date of filing of the Memorandum of Appeal.

Counsel for the respondent objected to the third ground and cited Order 53, rule 3(1), which reads:

"3. (1) Copies of the statement and of the affidavits in support of the application for leave under rule 1 must be served with the notice of motion or summons under rule 2 and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement."

No application to amend the statement was made by the applicants under Order 53, rule 3(2), which reads:

"3. (2) The court or judge may on the hearing of the motion or summons allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply copies of such further affidavits."

Alternatively, it was also suggested in the argument before this court that rule 10(3) was only directory and not mandatory, and counsel cited *Maxwell — Interpretation of Statutes,* 12th Edn., page 320 *et seq* in support thereof.

Counsel for the applicants contended that the Rent Control Rules are statutory. It lacks jurisdiction when the Rent Appeal Board dismissed the appeal, since it failed to hear the appeal within six weeks, and cited *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store & Anor.*[1] at page 146. The passage reads:

"The word 'jurisdiction' in the law and doctrine of procedure constitutes and connotes the juridical expression of the right and obligation of an authority on which the law confers jurisdictional functions. . . ."

Briefly stated, the Rent Appeal Board must follow the procedure.

In my view, the remedy of the parties if they are dissatisfied that the hearing was not heard in time may possibly lie elsewhere. However that may be, I do not think that non-compliance with such matters can possibly be said to go to the foundation of the jurisdiction of the Rent Appeal Board. Apart from this, a possible remedy, as it seems to me, would have been a remedy by way of *mandamus* as in the case of *Seereelall Jhuggroo* v. *Central Arbitration and Control Board.*[2] Here again, I think this contention fails.

That brings me to a consideration of the allegation mentioned in Ground No. 1 viz.:

"The Rent Appeal Board lacked jurisdiction when it dismissed the appeal by the applicants against the Order that the applicants herein vacate and give up occupation of the premises No. 18, Theatre Street, Taiping as there was no evidence that funds were available at the filing of the application for the purpose of putting into effect the development."

The principle applying to such cases about which much has been said and more written, is set out in a recent case in which their Lordships in *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.*[3] ("Fire Bricks") (following the House of

Lords decision in *Anisminic Ltd.* v. *Foreign Compensation Commission*[4] ("Anisminic"), considered the effect of section 29(3)(a) (now section 32(3)(a)) of the Industrial Relations Act, 1967, said that the section did prohibit the High Court from quashing an award of the Industrial Court by *certiorari* proceedings, if it merely made an error of law on the face of the record which did not affect its jurisdiction, and following the House of Lords decision in *Anisminic,* said:

"(1) when words in a statute oust the power of the High Court to review decisions of an inferior tribunal by *certiorari,* they must be construed strictly;

(2) it has the power if the inferior tribunal has acted without jurisdiction or 'if it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity';

(3) but if the inferior tribunal has merely made an error of law which does not affect its jurisdiction, and if its decision is not a nullity for some reason such as breach of the rules of natural justice, then the ouster will be effective; and

(4) the decision of Lord Denning M.R. in *Pearlman* v. *Harrow School*[5] that the distinction between an error of law which affected jurisdiction and one which did not should be discarded, was not accepted. The court can correct an error of law of the inferior tribunal if the tribunal acted in excess of its jurisdiction as opposed to merely making an error of law in its judgment by misinterpreting the statute in question. (See the dissenting opinion of Geoffrey Lane L.J. in *Pearlman* v. *Harrow School (supra)* at page 74);

and referring to the *Anisminic's* case, where Lord Reid said at page 171:

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity.... But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

Counsel for the applicants says the Rent Appeal Board lacked jurisdiction ..., and referred to *Lee Kwee Foh Ltd.* v. *Yeong Choon Foong.*[6]

It was suggested in argument, and I think correctly, by counsel on behalf of the respondent that the expression "Rent Appeal Board lacked jurisdiction ..." has been ingeniously but inaptly described. More accurately, it is an error of fact which does not affect jurisdiction. Furthermore, in *Lee Kwee Foh's* case, the question arose in, I think, slightly different circumstances and is therefore distinguishable. The fund was not set aside, whereas in the case before this court, respondent admitted he had a sum of $52,072 (Exhibit "RT", p. 3). This was the figure at the date of application, but the contractor was not asked what was the cost of the application at the time of application. There was a time lapse when the application was made, but the date of hearing was later; the sum would no doubt be within the sum of $52,000. The facts being different, the one case is no authority in the other. These are questions of fact which the Rent Appeal Board had dealt with. Section 15(1) of the Control of Rent Act in terms provide that the decision of the Rent Appeal Board shall be final and not questioned except on a jurisdictional point.

Where the proceedings are regular upon their face and the inferior tribunal has jurisdiction, the superior court will not grant the *certiorari* on the ground that the court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction, merely because it incidentally misconstrues a statute nor will *certiorari* be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong in matters of fact (see *Colonial Bank of Australasia* v. *Willan;*[7] *R.* v. *Nat Bell Liquors Ltd.*[8]).

There is however one other case to which perhaps I might usefully refer and to which Lord Fraser referred with approval in *Fire Bricks* and that is the case of *Mak Sik Kwong* v. *Minister of Home Affairs (No. 2)*[9] and *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store, supra,* both of which were decided by Abdoolcader J. Like Lord Fraser, I would similarly quote the passage appearing in *Mak Sik Kwong (No. 2)* where Abdoolcader J. held that a provision in the Control of Rent Act, 1966, which he construed as an ouster clause, was effective to exclude *certiorari* except for "manifest defect of jurisdiction in the authority that made the decision or manifest fraud in the party procuring it".

I now turn to the last of these grounds. It was urged that the Rent Appeal Board was wrong in law in failing to consider that the Rent Tribunal erred when it closed the hearing without hearing the applicants in the Rent Tribunal application and thereby failed to consider the defences of the applicants.

It is not disputed that the applicants' case was set out in a statement under Order 53, rule 1(2) and they are represented by counsel. In addition, there is an application by the applicants, but no reply was filed by the respondent. The applicants have produced evidence by way of affidavit. It falls for observation that at the hearing before the Rent Tribunal, counsel for applicants cross-examined the building contractor and at the end of the hearing thereof made a short submission. (See *The Pahang South Union Omnibus Co. Bhd.* v. *The Minister of Labour and Manpower & Anor.*[10] and the authorities cited at pages 10, 11 and 12 therein.)

That being the position, it is my view that the applicants concerned had a reasonable opportunity of presenting their case and in any event there is no breach of natural justice.

For the reasons I have endeavoured to set out, I am of the opinion that *certiorari* cannot lie, and I affirm the decision of the Rent Appeal Board with costs.

Order accordingly.

Solicitors: *Lim Boon Seng; Cheang Lee & Ong.*